

JOSE V. NERI, PLAINTIFF AND APPELLEE, VS. LIBRADO C. LIM, DEFENDANT AND APPELLANT.

G. R. No. L-17529. July 31, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision and an order of the Court of First Instance of Rizal, Pasay City Branch.

Plaintiff Jose V. Neri seeks to recover from defendant Librado C. Lim the sum of P17,823.13, with interest thereon, plus P10,000 as moral damages, P5,000 as exemplary damages, and P500 as attorney's fees, as well as the costs. It is averred in the complaint that said sum of P17,823.13 is the commission that Lim had allegedly agreed to pay Neri for his services in bringing about the consummation of two (2) transactions concerning certain properties of lim in the province of Masbate, namely: (1) the sale of one parcel of land to Ramon V. Escano, on July 14, 1959, for P80,231.38; and (2) a contract of lease in favor of the same party, dated July 15, 1959, of another parcel of land, with option on his part to purchase the same for P100,000.00.

In due course, defendant filed an answer admitting some allegations of the complaint, denying other allegations thereof, asserting that plaintiff had done nothing to consummate the transactions above referred to and that defendant's obligation to the plaintiff was merely moral, and setting up a counterclaim for damages and attorney's fees. After the filing of plaintiff's reply and answer to the counterclaim, controverting the allegations thereof, the case was, sometime in December, 1959, set for hearing. On the date thereof, February 2, 1960, defendant did not, however, appear in court. Upon plaintiff's motion, he was allowed to introduce evidence, and, shortly, thereafter, or on February 22, 1960 the court rendered a decision sentencing the defendant to pay to plaintiff P17,823.13, with interest thereon, at the legal rate, from August 17, 1959, until full payment thereof, in addition to P1,000 as moral damages, P500 as exemplary damages and P1,000 as attorney's fees, plus the costs, and dismissing defendant's counterclaim.

On motion of the plaintiff, the lower court ordered, on May 10, 1960, the issuance of the corresponding writ of execution. Soon later, the Provincial Sheriff of Rizal levied upon a house and lot of the defendant in San Juan Heights subdivision and gave notice, on June 13, 1960 that said property would be sold at public auction to the highest bidder on July 5, 1960.

On June 22, 1960, defendant filed a motion praying that the decision be set aside, the writ of execution quashed and the schedule auction sale stopped or held in abeyance. After due hearing this motion was denied on July 7, 1960. Thereupon, defendant gave notice of his intention to appeal directly to the Supreme Court from said decision and from the order of July 7, 1960.

Defendant maintains that his motion of June 22, 1960, should have been granted because he had never been notified of the hearing of the case scheduled to take place on February 2, 1960, and that he came to know for the first time of the decision dated February 22, 1960, when he received on May 27, 1960, a notice of garnishment from the Provincial Sheriff of Rizal dated May 25, 1960. It appears, however, that the corresponding notice of the

aforementioned hearing was sent to the defendant by registered mail on December 4, 1959, but was returned to the lower court on January 8, 1960, owing to defendant's failure to claim it despite three (3) notice cards sent by the postmaster of San Juan, Rizal and received by the defendant and that copy of the decision of February 22, 1960, sent by registered mail to the defendant by the clerk of the lower court on or about March 4, 1960, was, also, returned thereto unclaimed, notwithstanding the notices sent by the aforementioned postmaster to the defendant on March 7, 15 and 22 of the same year.

Defendant would have us believe that his failure to claim said communications in the mail was due to illness on his part, he having been confined in a hospital from February 22 to March 29, 1960 and that he had authorized nobody to receive his mail. In this connection, His Honor the trial Judge had the following to say:

"* * * Much as this Court would wish to sympathize with the defendant, there are, however, very strong reasons which prevent it from doing so. The plaintiff's opposition to the motion under consideration shows that long before defendant's illness, he consistently failed to receive the registered letters (Annexes 'A' and 'B') sent to him by plaintiff's counsel, so much so that this failure appears to be already a pattern of conduct for the defendant. Even the notice of hearing sent to him by this Court, the registry notices of which were received by defendant prior to his illness, was returned unclaimed. Defendant was already out of the hospital when the decision of the Court was returned to it unclaimed on April 8, 1960, but he likewise failed to claim the same. Annex 'C' of plaintiff's opposition also shows that on April 5, 1960, another registered letter was sent to the defendant, but the latter failed to claim it although he received the corresponding notices therefor. These instances, in the view of this Court, show an utter disregard on defendant's part of the consequences which would surely follow from his consistent failure to observe the ordinary prudence required of every man. The assertion that defendant did not authorize any person to receive his mail matters, instead of mitigating his fault aggravate the same. Had he been more careful in attending to his affairs, he should have taken the precaution, in view of his state of health, to authorize someone close to him to attend to such a matter. The fact that defendant did not do so, and because of his norm of conduct above stated, it is our sense that he is not entitled to the favorable discretion of this Court."

Upon the other hand, the record does not indicate that defendant has a good defense and that, if his motion of June 22, 1960 were granted, there are reasonable grounds to believe that the result of the case may be different. Whereas the evidence for the plaintiff is mainly documentary, defendant has not even intimated the nature of the proof available to establish the allegations made in his answer. Neither has he submitted any affidavit in support of said allegations. What is more, his "defense" to the effect that his "obligation" to compensate the plaintiff is merely "moral," suggests that plaintiff's allegations are substantially correct, as the documentary evidence on record show it.

Wherefore, the decision and the order appealed from are hereby affirmed, with costs against the defendant. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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